

Amendment No. 1 to HB2159

Crawford
Signature of Sponsor

AMEND Senate Bill No. 2059*

House Bill No. 2159

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 2-7-111, is amended by adding the following language as a new subsection:

() In a polling place where precinct-based optical scanners are utilized, the election commission shall post instructions stating, "Please check the recorded votes on your ballot before inserting into scanner."

SECTION 2. Tennessee Code Annotated, Section 2-20-103(a)(1), is amended by adding the following language as a new subdivision:

(E) At the same time the machines are inspected under § 2-9-105, the machine technicians shall certify in writing that the proper firmware is loaded on each unit of voting equipment and that the system settings are correct.

SECTION 3. Tennessee Code Annotated, Title 2, Chapter 20, is amended by adding the following as a new section:

(a)

(1) Following each election in a county having a population of not less than two hundred forty-seven thousand seven hundred (247,700) nor more than two hundred forty-seven thousand eight hundred (247,800), according to the 2020 federal census or a subsequent federal census, the county election

commission shall, in accordance with this section, conduct automatic mandatory audits of the voter-verified paper ballots cast in each election conducted in 2022.

(2) After the November 2022 election, the county election commission shall audit ballots for the governor in a gubernatorial election. The county election commission may select one (1) or more additional races to be audited.

(3) After the August 2022 and May 2022 elections, the county election commission shall audit ballots for the contested election to the highest countywide office. The county election commission may select one (1) or more additional races to be audited.

(4) For any other election, the county election commission shall select one (1) or more races in which more than one (1) candidate is running to be audited.

(b)

(1) The county election commission shall prepare to conduct the audit in the following manner:

(A) Prior to each election, the county election commission shall first assure that each precinct-based optical scanner used to count absentee by-mail ballots, early voting ballots, and election day ballots have been cleaned of debris;

(B) At the same time the machines are inspected under § 2-9-105, the machine technicians shall certify in writing that the proper firmware is loaded on each unit of voting equipment and that system settings are correct; and

(C)

(i) The county election commission shall randomly select at least one (1) precinct-based optical scanner from a convenience voting center in the county; and

(ii) The county election commission shall randomly select at least one (1) precinct to audit the absentee by-mail ballots cast in the precinct.

(2) No later than the day after the election and at a place open to the public, the county election commission shall randomly select the voting convenience center or centers, as appropriate, and shall select at least one (1) precinct-based optical scanner used to count ballots during early voting to be used for the automatic mandatory audit and shall announce to the public the results of the random drawing. The method of random selection used by the county election commission must ensure that all voting precincts in the county and all precinct-based optical scanners used to count ballots cast during early voting have an equal chance of being selected. The county election commission shall give public notice at least forty-eight (48) hours prior to the audit being conducted.

(c)

(1) After the unofficial election results, excluding provisional ballots, have been determined and made public, a county election commissioner from the majority party and a county election commissioner from the minority party shall have all absentee by-mail ballots, all ballots cast during the early voting period, and all ballots cast on election day locked and secured until the county election commission convenes to conduct the audit. The county election commission shall also lock and secure each precinct-based optical scanner used in the

election process until the county election commission convenes to conduct the audit.

(2) Before the election is certified, the automatic audit must be conducted in the following manner:

(A) At a time and place open to the public, the county election commission shall identify the ballot boxes containing the absentee by-mail ballots cast in the randomly selected voting precinct or precincts and identify the ballot boxes containing the election day ballots cast in the randomly selected convenience voting center or centers. The election commission shall include in the audit only those absentee by-mail ballots that were counted by a precinct-based optical scanner rather than by hand. A county election commissioner from the majority party and a county election commissioner from the minority party, personally holding the keys to such ballot box or boxes, shall unlock the ballot box or boxes;

(B) The election commission shall identify and remove from the respective ballot box or boxes each ballot cast in the absentee by-mail voting process in the selected precincts that were counted by a precinct-based optical scanner and each ballot cast on election day in the selected convenience voting center or centers;

(C)

(i) In auditing the precinct-based optical scanner that had been used to originally count the early voting voter-verified paper ballots, the county election commission shall remove the early voting ballots contained in the ballot box of the precinct-based

optical scanner and shall verify the accuracy of the unofficial election results by hand counting the ballots;

(ii) In auditing the absentee by-mail ballots which were counted by a precinct-based optical scanner, the county election commission shall take the absentee by-mail ballots from the randomly selected voting precinct or precincts and shall verify the accuracy of the unofficial election results by hand counting the absentee by-mail ballots;

(iii) In auditing the election day ballots, the county election commission shall take the election day ballots from the randomly selected voting precinct or precincts and shall verify the accuracy of the unofficial election results by hand counting the ballots; and

(iv) To judge the accuracy of the unofficial election results, the county election commission shall compare the results obtained during the automatic audit with the unofficial election results obtained on election night;

(D)

(i) If as a result of the automatic audit, the county election commission finds that there is a variance of more than one percent (1%) between the unofficial election results and the automatic audit, the county election commission shall randomly select at least one (1) precinct-based optical scanner from two (2) additional convenience voting centers in the county. The county election commission must identify the ballot box or boxes from the subject

convenience voting centers, obtain the ballots out of those ballot boxes, and then hand count the ballots;

(ii) If all of the ballots in a race are counted as part of the manual hand count audit, the results of the hand count audit shall be used as the official results to be certified by the county election commission; and

(iii) The results of a difference between precinct-based optical scanner tabulations or the hand count audit must be available for use in any election contest filed pursuant to chapter 17 of this title; and

(E) The county election commission shall report the results of the 2022 hand count election audit pilot to the coordinator of elections and make the report available to the public.

(d) This section is deleted on January 1, 2023, and will no longer be effective on and after that date.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.